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tion in receiving a deposition and letter in evidence, while refusing to allow defendants to take further depositions; admission of the matter not creating a new situation, entitling defendants to take testimony on the merits.

**18. Equity (§ 392\*)—Request to Take Further Testimony Must Set up New Matter and State Evidence Relied on.**—Request to trial court to take further testimony, practically a request for rehearing, must set up new matter, and state distinctly the evidence relied on.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 502.]

Appeal from Chancery Court of Richmond.

Suit by the Savings Bank of Richmond against John A. Hutcheson. From decree for plaintiff, defendant appeals. Affirmed.

*Miller & Miller*, of Richmond, for plaintiff in error.

*A. W. Patterson*, of Richmond, for defendant in error.

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UNITED STATES FIDELITY & GUARANTY CO. *v.*  
COUNTRY CLUB OF VIRGINIA, Inc.

Jan. 28, 1921.

[105 S. E. 686.]

**1. Principal and Surety (§ 41\*)—Plea of Surety Company Setting up Misrepresentations of Obligee on Bond Good.**—In an action against a guaranty company on a surety bond, it was a good defense that the bonded party had falsely represented that he had never been in arrears or default.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 11.]

**2. Principal and Surety (§ 159\*)—Surety Company Had Burden of Proof on Issue of Misrepresentations in Applying for Bond.**—A guaranty company sued on its surety bond had the burden of proof on the issue of false representations made by the obligee in its statement attached to application for the bond.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 343.]

**3. Appeal and Error (§ 1005 (2)\*)—Approved Verdict Not Disturbed Unless Unsupported or Plainly Wrong.**—The Supreme Court of Appeals cannot disturb verdict of the jury approved by the trial court, unless wholly without evidence to support it, or so plainly wrong as to leave no doubt on the subject.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 628.]

**4. Principal and Surety (§ 78\*)—Surety on Bond of Treasurer of Club Liable for His Own Note in His Hands as Secretary.**—A note executed by the secretary and treasurer of a country club for its stock

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

went into the hands of the secretary and treasurer as such as much as if it had been the note of a third person, and his failure to account for it imposed liability on the surety on his bond to the same extent as if it had been the note of a third person, surrender of the stock certificate by the treasurer to the country club merely reinstating its proper custody, as it was not properly issuable until fully paid for, and so not discharging the liability of either the treasurer or his surety for the balance due.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 478.]

**5. Principal and Surety (§ 79\*)—Surety on Bond of Club Treasurer Liable for Loss through Failure to Charge Cash with Check in Payment of Debt Credited to Debtor.**—Where the treasurer of a country club credited its debtor with the amount of his payment by check on the member ledger, and deposited the check to the credit of the club in bank, but failed to debit his cash account with it, and thereafter the cash balanced, notwithstanding the failure to charge cash with the check, there was a loss to the club of the amount of the check, the actual loss being in petty cash, and the treasurer's surety is liable therefor.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 478.]

**6. Principal and Surety (§ 79\*)—Treasurer of Club Chargeable on Bond with Difference between Assets Received for from Employee and the Cash Account.**—Where an employee of the treasurer of a country club, who for four months had charge of the affairs at the clubhouse, when he left turned over to the treasurer all of the assets belonging to the petty cash account, and took the treasurer's receipt therefor, the treasurer and the surety on his bond were chargeable with the difference between the amount so received for, \$659.53, and the petty cash account on the books for that date, \$145.02, namely, \$514.51.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 478.]

**7. Principal and Surety (§ 162 (2)\*)—Liability of Surety on Bond of Treasurer of Club for Particular Item for Jury under Evidence.**—In an action by a country club against the surety on its treasurer's bond, question of the surety's liability for an item of \$645, credited to accounts, receivable, held for the jury under the evidence.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 350.]

**8. Trial (§ 267 (4)\*)—Substituting Instruction as to Limitations More Directly Adapted to Evidence than that Requested Not Error.**—In an action against the surety on bond of the treasurer of plaintiff country club, substituting instruction more directly adapted to the evidence than the instruction requested by defendant was not error.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 709.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

**9. Principal and Surety (§ 123 (2)\*)—Instruction Directing Finding for Surety if Plaintiff Refused to Make Affidavit to Itemized Claim Properly Refused.**—In an action against the surety on the bond of the treasurer of plaintiff country club, defendant surety company's instruction, directing finding for defendant if plaintiff club refused to make the affidavit required to its itemized claim, was properly refused; the condition of the bond not requiring that plaintiff furnish the form of affidavit which defendant surety company furnished to it.

**10. Principal and Surety (§ 162 (3)\*)—Instruction on Liability of Surety for Acts of Employee of Plaintiff's Treasurer Not Erroneous.**—In an action by a country club against the surety on its treasurer's bond, instruction that for plaintiff club to recover, it must show it had sustained loss of money, securities, etc., by an act of fraud or dishonesty committed by the treasurer in the performance of his duties, or committed by any agent of the treasurer's during the continuance of the bond for whose act he was responsible, was not erroneous, though not as clearly expressed as it should have been.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 716.]

**11. Principal and Surety (§ 79\*)—If Entries Made by Treasurer's Employees Showed Shortage without Their Misconduct, the Shortage Was the Treasurer's.**—If entries on a country club's books, made by the employees of its treasurer, showed a shortage in the accounts of the treasurer, and there was nothing to show fraud or misconduct in connection therewith on the part of the employees, the shortage was the treasurer's, and there was a liability on his bond therefor.

Sims J., dissenting.

Error to Law and Equity Court of City of Richmond.

Action by the Country Club of Virginia, Incorporated, against the United States Fidelity & Guaranty Company. To review judgment for plaintiff, defendant brings error. Affirmed.

*David Meade White*, of Richmond, for plaintiff in error.

*Pollard & Smith*, of Richmond, for defendant in error.

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DIRECTOR GENERAL OF RAILROADS *v.* CHANDLER.

March 17, 1921.

[106 S. E. 226.]

**1. Evidence (§ 407 (2)\*)—Bill of Lading Prima Facie Evidence that Carrier Received Goods, but May Be Rebutted.**—Bill of lading constitutes prima facie evidence of fact that carrier received goods recited therein, but this evidence may be rebutted.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 677.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.